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22 **UNITED STATES DISTRICT COURT**  
23 **NORTHERN DISTRICT OF CALIFORNIA**

24 **IN RE AXA WAGE AND HOUR**  
25 **LITIGATION**

Case No. C-06-4291 JSW  
**Consolidated Actions**

**COLLECTIVE/CLASS ACTION**

~~[PROPOSED]~~ PRELIMINARY APPROVAL  
ORDER

~~[PROPOSED]~~ PRELIMINARY APPROVAL ORDER

1 The renewed motion of the SETTLING PARTIES for entry of a PRELIMINARY  
2 APPROVAL ORDER of a class action settlement, and setting a date for a FINAL APPROVAL  
3 HEARING, came on for hearing on or about May 1, 2009. The Court has considered the Class  
4 Action Settlement (the "SETTLEMENT"), whose terms are memorialized in the Class Action  
5 Settlement Agreement (the "SETTLEMENT AGREEMENT") and its accompanying exhibits,  
6 the submissions of CLASS COUNSEL, and all other papers filed in the above-captioned action  
7 including the revised notices submitted on May 11, 2009,  
8 (the "ACTION"). The matter having been submitted and good cause appearing therefore, the  
9 Court finds as follows:

10 1. All defined terms contained herein shall have the same meanings as set forth in  
11 the SETTLEMENT AGREEMENT;

12 2. The REPRESENTATIVE PLAINTIFFS and AXA, through their counsel of  
13 record and pursuant to the terms of the SETTLEMENT, have reached an agreement to resolve  
14 the ACTION and release all RELEASED CLAIMS;

15 3. The Court conditionally finds that, for the purposes of preliminarily approving  
16 this SETTLEMENT only and for no other purpose and with no other effect in the context of this  
17 SETTLEMENT, the proposed SETTLEMENT CLASS meets the requirements for certification  
18 under Rule 23 of the Federal Rules of Civil Procedure: (a) the proposed SETTLEMENT CLASS  
19 is ascertainable and so numerous that joinder of all members of the SETTLEMENT CLASS is  
20 impracticable; (b) there are questions of law or fact common to the proposed SETTLEMENT  
21 CLASS, and there is a well-defined community of interest among members of the proposed  
22 SETTLEMENT CLASS with respect to the subject matter of the action; (c) the claims of some  
23 or all of the REPRESENTATIVE PLAINTIFFS are typical of the claims of the members of the  
24 proposed SETTLEMENT CLASS; (d) the REPRESENTATIVE PLAINTIFFS and CLASS  
25 COUNSEL will fairly and adequately protect the interests of the proposed SETTLEMENT  
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1 CLASS MEMBERS; (e) common issues of the SETTLEMENT CLASS predominate over  
2 individual issues of SETTLEMENT CLASS MEMBERS; (f) a class action is superior to other  
3 available methods for an efficiency adjudication of this controversy; and (g) CLASS COUNSEL  
4 for the REPRESENTATIVE PLAINTIFFS are well-qualified to serve as counsel for the  
5 REPRESENTATIVE PLAINTIFFS in their own capacities as well as their respective capacities  
6 for the SETTLEMENT CLASS;  
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8 4. The moving parties have presented to the Court for review the SETTLEMENT.  
9 The SETTLEMENT is within the range of reasonableness and meets the requirements for  
10 preliminary approval and appears to be fair to absent class members and adequate, subject to the  
11 Court's further evaluation after absent class members receive NOTICE of the proposed  
12 SETTLEMENT; and  
13

14 5. The moving parties have also presented to the Court for review a plan to provide  
15 NOTICE to SETTLEMENT CLASS MEMBERS of the proposed SETTLEMENT which sets  
16 out the terms of the SETTLEMENT and the SETTLEMENT CLASS MEMBERS' options.  
17 There are three versions of the NOTICE; one for the ESF AGENT SUBCLASS, one for the  
18 NON-ESF AGENT STATE SUBCLASS, and one for the NON-ESF AGENT NATIONWIDE  
19 SUBCLASS. The notices for the ESF AGENT SUBCLASS and NON-ESF AGENT STATE  
20 SUBCLASS properly explain the terms of the settlement and the options available to each  
21 SETTLEMENT CLASS MEMBER under Federal Rule of Civil Procedure 23. The notice for  
22 the NON-ESF AGENT NATIONWIDE SUBCLASS properly explains the terms of the  
23 SETTLEMENT and the options available to each SETTLEMENT CLASS MEMBER under the  
24 Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 *et seq.* ("FLSA"). NOTICE will  
25 be mailed to all SETTLEMENT CLASS MEMBERS at their last known address. The plan  
26 regarding NOTICE proposed by the SETTLING PARTIES is the most practical under the  
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1 circumstances and satisfies pertinent due process requirements and the requirements of Federal  
2 Rule of Civil Procedure 23 and the FLSA. The parties also have submitted a cover letter to be  
3 sent to certain class members further clarifying the  
4 notices.

5 Good cause appearing therefore, **IT IS HEREBY ORDERED** that:

6 1. Pursuant to Rule 23 of the Federal Rules of Civil Procedure and the FLSA, the  
7 SETTLEMENT CLASS is provisionally certified for purposes of the SETTLEMENT;

8 2. The SETTLEMENT is preliminarily approved;

9 3. The form and content of the proposed NOTICE to SETTLEMENT CLASS  
10 MEMBERS, which includes the notices applicable to each of the three separate subclasses, is  
11 approved; based upon the parties submission dated May 11, 2009, at Docket No. 130.

12 4. NOTICE shall be mailed by the SETTLEMENT ADMINISTRATOR to the  
13 applicable SETTLEMENT CLASS MEMBERS by first class mail, pursuant to the applicable  
14 provision provisions in the SETTLEMENT AGREEMENT, within fifteen (15) days after receipt  
15 of the class data list from AXA;

16 5. The form and content of the proposed CLAIM FORMS and EXCLUSION FORM  
17 is approved;

18 6. The SETTLING PARTIES' mutually agreed upon SETTLEMENT  
19 ADMINISTRATOR is approved;

20 7. The SETTLEMENT is deemed filed for purposes of triggering AXA'S obligation  
21 to provide CAFA notice to the appropriate state and federal officials as of the date of this  
22 PRELIMINARY APPROVAL ORDER;

23 8. The law firms of Cotchett, Pitre & McCarthy; Barroway Topaz Kessler Meltzer &  
24 Check, LLP; Lim, Ruger & Kim, LLP; Initiative Legal Group, LLP; The Law Offices of John M.  
25 Kelson; and Carlson Lynch Ltd. are approved as CLASS COUNSEL, with Cotchett, Pitre &  
26 McCarthy and Barroway Topaz Kessler Meltzer & Check, LLP serving as CO-LEAD CLASS  
27 COUNSEL;

28 9. Paul Meola, Stephen Kerner, Wayne Easley, Carlton M. Lennon, James L.  
Thompson, Anthony Bolea and Harkant Dhruv are approved as REPRESENTATIVE  
PLAINTIFFS;

10. Pursuant to the schedule set forth in the SETTLEMENT AGREEMENT, the  
applicable NOTICE, CLAIM FORM, and EXCLUSION FORM are to be mailed to all  
SETTLEMENT CLASS MEMBERS ~~(except for NON-ESF AGENT NATIONWIDE~~

The Cover Letter submitted with Document No. 130 shall also be mailed to appropriate  
class members. [PROPOSED] PRELIMINARY APPROVAL ORDER

1 ~~SUBCLASS MEMBERS: they will receive only the NOTICE and CLAIM FORM);~~

2 11. No later than fourteen (14) days prior to the FINAL APPROVAL HEARING, the  
3 SETTLING PARTIES shall file a joint motion for final approval of the SETTLEMENT; and

4 12. The Court will hold a FINAL APPROVAL HEARING on the question of whether  
5 the proposed SETTLEMENT should be finally approved as fair, reasonable and adequate as to  
6 the SETTLEMENT CLASS ~~at least one hundred and twenty-five (125) calendar days after the~~  
~~entry of the PRELIMINARY APPROVAL ORDER:~~ on September 25, 2009 at 9:00 a.m.

- 7 (a) Written objections to the proposed SETTLEMENT by SETTLEMENT  
8 CLASS MEMBERS who have not excluded themselves from the  
9 SETTLEMENT will be considered if received by CLASS  
10 COUNSEL on or before forty-five (45) days following the initial date of  
11 mailing of the applicable NOTICE;  
12 (b) At the FINAL APPROVAL HEARING, SETTLEMENT CLASS  
13 MEMBERS who have filed timely written objections may be heard orally  
14 regarding the SETTLEMENT;  
15 (c) CLASS COUNSEL and counsel for AXA should be prepared at the  
16 hearing to respond to objections filed by SETTLEMENT CLASS  
17 MEMBERS, if any, and to provide, as appropriate, other information  
18 bearing on whether or not the SETTLEMENT should be approved.  
19 Those responses shall be addressed in the Joint Motion for Approval.

18 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

19 DATED: May 12, 2009

20   
21 HON. JEFFREY S. WHITE  
22 UNITED STATES DISTRICT COURT JUDGE  
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